

§210.13

37 CFR Ch. II (7–1–15 Edition)

(f) A *compulsory licensee* is a person or entity exercising the compulsory license to make and distribute phonorecords of nondramatic musical works as provided under 17 U.S.C. 115, including by means of a digital phonorecord delivery.

(g) A phonorecord is considered *distributed* if the compulsory licensee has voluntarily and permanently parted with possession of the phonorecord, which shall occur as follows:

(1) In the case of physical phonorecords relinquished from possession for purposes other than sale, at the time at which the compulsory licensee actually first parts with possession;

(2) In the case of physical phonorecords relinquished from possession for purposes of sale without a privilege of returning unsold phonorecords for credit or exchange, at the time at which the compulsory licensee actually first parts with possession;

(3) In the case of physical phonorecords relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange:

(i) At the time when revenue from a sale of the phonorecord is “recognized” by the compulsory licensee; or

(ii) Nine months from the month in which the compulsory licensee actually first parted with possession, whichever occurs first. For these purposes, a compulsory licensee shall be considered to “recognize” revenue from the sale of a phonorecord when sales revenue would be recognized in accordance with GAAP.

(4) In the case of a digital phonorecord delivery, on the date that the phonorecord is digitally transmitted.

(h) A *phonorecord reserve* comprises the number of phonorecords made under a particular compulsory license, if any, that have been relinquished from possession for purposes of sale in a given month accompanied by a privilege of return, as described in paragraph (g)(3) of this section, and that have not been considered distributed during the month in which the compulsory licensee actually first parted with their possession. The initial number of phonorecords comprising a phono-

record reserve shall be determined in accordance with GAAP.

(i) A *negative reserve balance* comprises the aggregate number of phonorecords made under a particular compulsory license, if any, that have been relinquished from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (g)(3) of this section, and that have been returned to the compulsory licensee, but because all available phonorecord reserves have been eliminated, have not been used to reduce a phonorecord reserve.

(j) *GAAP* means U.S. Generally Accepted Accounting Principles, except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards, as issued by the International Accounting Standards Board, or as accepted by the Securities and Exchange Commission if different from that issued by the International Accounting Standards Board, in lieu of Generally Accepted Accounting Principles, then an entity may employ International Financial Reporting Standards as “GAAP” for purposes of this subpart.

§210.13 Accounting requirements where sales revenue is “recognized.”

Where under §210.12(g)(3)(i), revenue from the sale of phonorecords is “recognized” during any month after the month in which the compulsory licensee actually first parted with their possession, said compulsory licensee shall reduce particular phonorecord reserves by the number of phonorecords for which revenue is being “recognized,” as follows:

(a) If the number of phonorecords for which revenue is being “recognized” is smaller than the number of phonorecords comprising the earliest eligible phonorecord reserve, this phonorecord reserve shall be reduced by the number of phonorecords for which revenue is being “recognized.” Subject to the time limitations of §210.12(g)(3)(ii), the number of phonorecords remaining in this reserve

shall be available for use in subsequent months.

(b) If the number of phonorecords for which revenue is being “recognized” is greater than the number of phonorecords comprising the earliest eligible phonorecord reserve but less than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve and continuing to the next succeeding phonorecord reserves, that are completely offset by phonorecords for which revenue is being “recognized.” Said compulsory licensee shall then reduce the next succeeding phonorecord reserve by the number of phonorecords for which revenue is being “recognized” that have not been used to eliminate a phonorecord reserve. Subject to the time limitations of § 210.12(g)(3)(ii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(c) If the number of phonorecords for which revenue is being “recognized” equals the number of phonorecords comprising all eligible phonorecord reserves, the person or entity exercising the compulsory license shall eliminate all of the phonorecord reserves.

(d) Digital phonorecord deliveries shall not be considered as accompanied by a privilege of return as described in § 210.12(g)(3), and the compulsory licensee shall not take digital phonorecord deliveries into account in establishing phonorecord reserves.

§ 210.14 Accounting requirements for offsetting phonorecord reserves with returned phonorecords.

(a) In the case of a phonorecord that has been relinquished from possession for purposes of sale accompanied by a privilege of return, as described in § 210.12(g)(3), where the phonorecord is returned to the compulsory licensee for credit or exchange before said compulsory licensee is considered to have “voluntarily and permanently parted with possession” of the phonorecord as described in § 210.12(g), the compulsory licensee may use such phonorecord to reduce a “phonorecord reserve,” as defined in § 210.12(h).

(b) In such cases, the compulsory licensee shall reduce particular phonorecord reserves by the number of phonorecords that are returned during the month covered by the Monthly Statement of Account in the following manner:

(1) If the number of phonorecords that are returned during the month covered by the Monthly Statement is smaller than the number comprising the earliest eligible phonorecord reserve, the compulsory licensee shall reduce this phonorecord reserve by the total number of returned phonorecords. Subject to the time limitations in § 210.12(g)(3)(ii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(2) If the number of phonorecords that are returned during the month covered by the Monthly Statement is greater than the number of phonorecords comprising the earliest eligible phonorecord reserve but less than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve, and continuing to the next succeeding phonorecord reserves, that are completely offset by returned phonorecords. Said compulsory licensee shall then reduce the next succeeding phonorecord reserve by the number of returned phonorecords that have not been used to eliminate a phonorecord reserve. Subject to the time limitations in § 210.12(g)(3)(ii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(3) If the number of phonorecords that are returned during the month covered by the Monthly Statement is equal to or is greater than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall eliminate all eligible phonorecord reserves. Where said number is greater than the total number of phonorecords comprising all eligible phonorecord reserves, said compulsory licensee shall establish a “negative reserve balance,” as defined in § 210.12(i).